

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

(1) IOIN-RSA-340-2005 (O&M)

Pritam Singh (since deceased) thr. LRs

...Appellants

Versus

Mukhtiar Singh (since deceased) thr. LRs and others

...Respondents

(2) IOIN-RSA-4542-2004 (O&M)

Bhajan Singh and another

...Appellants

Versus

Pritam Singh and others

...Respondents

**Date of Decision:- 01.10.2019.**

**CORAM: HON'BLE MR.JUSTICE H.S. MADAAN**

Present: Mr. Sumeet Mahajan, Sr. Advocate with  
Mr. Amit Kohar, Advocate for the appellants  
in RSA-340-2005.

Mr. Amit, Advocate for  
Mr. S.S. Walia, Advocate for the appellants  
in RSA-4542-2004.

Mr. Jai Bhagwan, Advocate for respondent No.4  
in RSA-340-2005 and for appellant No.2  
in RSA-4542-2004.

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**H.S. MADAAN, J.**

Briefly stated facts of the case are that plaintiff-Pritam Singh son of Sadhu Singh, resident of Village Bharowal Kalan, Tehsil Jagraon, District Ludhiana had brought a suit against defendants Mukhtiar Singh, Joginder Singh, Bhajan Singh and Malkit Singh of his village, seeking

possession as owner although he is already in possession as prospective buyer of the land measuring 5K-0M, detailed in headnote of the plaint, situated at Village Bharowal Kalan, Tehsil Jagraon, District Ludhiana, by way of specific performance of agreement dated 05.08.1996 with a prayer that Mukhtiar Singh-defendant No.1 be ordered to effect a regular sale deed in favour of the plaintiff on receipt of the balance sale consideration after setting aside the sale deed dated 13.11.1996 executed by defendant No.1 Mukhtiar Singh in favour of defendants No.2 to 4 and that defendants No.2 to 4 be ordered to join defendant No.1 in the execution and registration of the sale deed in favour of the plaintiff. In the alternative, plaintiff prayed for recovery of Rs.95,000/- as damages for breach of contract on the basis of oral and documentary evidence.

As per version of the plaintiff, Mukhtiar Singh-defendant No.1 being owner of the land measuring 34K-0M i.e. 3/4 share in land measuring 49K-16M, situated at Village Bharowal Kalan, Tehsil Jagraon, District Ludhiana, entered into an agreement to sell the same with the plaintiff on 05.08.1996 at the rate of Rs.1,50,000/- per killa, receiving a sum of Rs.1,50,000/- as earnest money on that very day and delivered the possession of the land to the plaintiff. Defendant No.1 had agreed to execute the sale deed in favour of the plaintiff on receipt of balance sale consideration amount on 30.11.1996. That the plaintiff had been ready and willing to perform his part of the agreement, however 30.11.1996, the stipulated date fixed for execution and registration of the sale deed happened to be a Saturday and 01.12.1996 a Sunday, on which days, the

office of Sub Registrar does not function, as such, the plaintiff got his presence marked before Sub Registrar on 02.12.1996. At that time, Mukhtiar Singh disclosed that he had already executed sale deed qua land measuring 5K in favour of defendants No.2 to 4 on 13.11.1996 and at that time, he had informed defendants No.2 to 4 that there was an agreement existing in favour of the plaintiff before execution of the sale deed. Therefore, the sale deed is liable to be set aside. That defendant No.1- Mukhtiar Singh along with his wife Smt. Gurdev Kaur have executed two sale deeds in favour of the plaintiff and his two sons on 02.12.1996 with regard to the land measuring 21K-18M for a sum of Rs.4,10,625/- and out of that amount, a sum of Rs.1 lakh was adjusted which had been paid as earnest money and the second sale deed was executed on 02.12.1996 qua the land measuring 16K and a sum of Rs.50,000/- i.e. balance sum out of the earnest money was also adjusted. The plaintiff prayed that his suit be decreed against the defendants.

On getting notice, defendants No.1, 3 & 4 appeared, whereas, defendant No.2 did not appear despite service and as such was proceeded against ex parte. Defendant No.1 filed his written statement, whereas defendant Nos.3 & 4 filed a joint written statement. In the written statement filed by defendant No.1, he admitted that he happened to be owner of the suit land regarding which, he had entered into an agreement to sell with the plaintiff. According to the answering defendant, he has been ready and willing to perform his part of the agreement and the plaintiff knew about the sale deed dated 13.11.1996

right from the date of its execution and further answering defendant has not committed any breach of terms of the agreement. Therefore, the plaintiff is not entitled to any damages. In the end, such defendant prayed for dismissal of the suit.

In the written statement, filed on behalf of defendants No.3 & 4, they raised various preliminary objections to wit, that the suit had been filed by the plaintiff in collusion with defendant No.1 and agreement to sell dated 05.08.1996 has been fabricated with a view to cause loss to such defendants; that defendant Nos.3 & 4 are bona fide purchasers for consideration and the plaintiff was estopped by his own act and conduct to bring the suit; he had no locus standi to file the suit, the suit was not maintainable; the suit was barred under Order 2 Rule 2 CPC. On merits, the answering defendants, contended that no such agreement had been entered into between the plaintiff and defendant No.1 and the agreement set up by the plaintiff is a forged document, which has been antedated with an intention to affect the sale transaction entered into between defendant No.1 and the answering defendants; that Ranjit Singh son of plaintiff-Pritam Singh is a Patwari, who has manipulated the entire matter for illegal gains; that there is a party factionalism in the village and both the parties belong to different groups. Such defendants denied that defendant No.1 had disclosed to them regarding existence of any agreement to sell to sell the suit land having been entered into between the plaintiff and defendant No.1. According to the answering defendants, it is hard to believe that the plaintiff failed to notice the possession

delivered under the sale deeds to them who are co-villagers and the pieces of land are situated abutting each other. The answering defendants submitted that they are bona fide purchasers for valuable consideration. According to such defendants, the alternative relief sought is only qua the damages and there is no prayer for return of earnest money, which speaks as to the collusiveness between the plaintiff and defendant No.1. In the end, such defendants prayed for dismissal of the suit.

The plaintiff filed replication. From the pleadings of the parties, following issues were framed:-

1. Whether the agreement of sale dated 05.08.1996 propounded by the plaintiff is perfectly legal and valid and was very much executed? OPP.
2. Whether defendants No.3 & 4 are bonafide purchasers for consideration as alleged? If so, its effect? OPD-3&4.
3. Whether the suit of plaintiff is collusive between the plaintiff and defendant No.1? OPD
4. Whether the plaintiff has no locus standi to file the present suit and whether the suit is not maintainable in the present form? OPD.
5. Whether the suit of the plaintiff is barred under Order 2 Rule 2 CPC? OPD
6. Whether the sale deed dated 13.11.1996 executed by Mukhtiar Singh defendant No.1 in favour of the defendants No.2 to 4 is illegal and void and liable to be set aside? OPP.
7. Whether the plaintiff is entitled to the possession of the suit land as prayed for by way of specific performance of the agreement of sale dated 05.08.1996 after setting aside the sale deed dated 13.11.1996? OPP.

8. In the alternative, whether the plaintiff is entitled to recovery of Rs.95000/- as prayed for as damages? OPP
9. Relief.

Parties were afforded adequate opportunities to lead evidence in support of their respective claims. During the course of evidence of the plaintiff, he examined Tarlochan Singh as PW1, Manjit Singh as PW2 and the plaintiff himself appeared as PW3

On the other hand, the defendants examined Stamp Vendor Baljit Singh as DW1, Deed Writer Sikander Singh as DW2, Bachint Singh as DW3, defendants Bhajan Singh and Malkit Singh themselves as DW4 and DW5 respectively.

In rebuttal, the plaintiff examined PW-4 Baljit Singh, Halqa Patwari and tendered some documents.

After hearing arguments, the trial Court of Civil Judge (Jr. Divn.) Jagraon, decided issue No.1 in favour of the defendants and against the plaintiff, issue Nos.2 was decided against the plaintiff and in favour of defendant Nos.3 & 4, issue Nos. 3 to 8 were decided in favour of the defendants and against the plaintiff, issue No.5 was not pressed at the time of arguments and even otherwise, due to paucity of cogent and legal evidence, issue was decided against the plaintiff. As a collective effect of the findings on the issues, suit of the plaintiff was dismissed by the trial Court of Civil Judge (Jr. Divn.) Jagraon, vide judgment and decree dated 13.01.2003.

Feeling aggrieved by the said judgment and decree, the plaintiff had preferred an appeal before District Judge, Ludhiana, which was assigned to Addl. District Judge, Ludhiana, who vide judgment and decree dated 10.09.2004, accepted the appeal partly. Resultantly, suit of the plaintiff/appellant for recovery of Rs.95,000/- from respondent/defendant No.1 was decreed, observing that if the said amount was not paid by respondent No.1, the same would be charged on the properties sold by him, vide registered sale deed to his vendees and the plaintiff/appellant could recover the amount from the said properties.

Plaintiff-Pritam Singh was not satisfied with that judgment and decree even and has approached this Court, by way of filing Regular Second Appeal No.340 of 2005. Defendant Nos.3 & 4 were also dissatisfied with the judgment and decree delivered by the Ist Appellate Court and have knocked at the door of this Court, by way of filing a separate Regular Second Appeal No.4542 of 2004. Notices to the respective respondents were given in both the appeals and they have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned trial Court on analysis of evidence brought on file by the parties and in the light of the factual and legal position come to the conclusion that the plaintiff had failed to prove that defendant No.1 had entered into any agreement to sell with the plaintiff and rather the plaintiff and defendant No.1 were colluding with each other to affect the

sale deed executed by defendant No.1 in favour of defendant Nos. 3 & 4.

The reasoning given by the trial Court for arriving at this conclusion is as follows:-

- From the depositions of PW-1 Tarlochan Singh and PW-2 Manjit Singh as well as that of plaintiff Pritam Singh appearing as PW3, it comes out that the khasra numbers had been entered in the agreement to sell on the basis of entries in jamabandi which was available with the parties but the date of issuance of such jamabandi Ex.P18 for the year 1991-92 is 12.11.1996, whereas, agreement Ex.P1 is dated 05.08.1996. Thus, the khasra numbers etc. could not have been entered in the agreement to sell on the basis of entries in jamabandi Ex.P18.
- Mukhtiar Singh had executed sale deed Ex.D1 for the land measuring 21K-18M for a sum of Rs.4,10,625/- in favour of the plaintiff, in which a sum of Rs.1 lakh had been adjusted out of earnest money of Rs.1,50,000/-, whereas, Smt. Gurdev Kaur wife of Mukhtiar Singh had executed another sale deed Ex.D2 for 16K of land in favour of plaintiff and the remaining sum of Rs.50,000/- out of earnest money had been adjusted.
- Gurdev Kaur was not a party to agreement Ex.P1 and it is difficult to understand as to how the amount of Rs.50,000/- was adjusted in the sale executed by her

Ex.D2

- Plaintiff Pritam Singh had filed a suit for permanent injunction against Mukhtiar Singh only on 14.11.1996 and Mukhtiar Singh after receiving the costs made a statement and the suit was dismissed as withdrawn.
- The execution of the sale deed by Mukhtiar Singh in favour of defendant Nos.2 to 4 stood duly proved by testimony of attesting witness examined as DW3 coupled with statement of deed writer Sikander Singh-DW2. In that way, Mukhtiar Singh knowing fully well that he was not left with any interest in the suit property has received the costs and the suit was dismissed as withdrawn, in view of his statement thereby showing connivance between the plaintiff and Mukhtiar Singh-defendant No.1. In the said case, the collusion between them stood established.

In the case in hand, counsel representing Mukhtiar Singh has not opposed the case set up by the plaintiff. The sale deed executed by Mukhtiar Singh in favour of defendant Nos.2 to 4 Ex.D1 and Ex.D2, show that the possession of suit land had been delivered by the vendor to the vendees. In para No.15 of the judgment, the trial Court has concluded as under:-

*“In light of the above discussion, the Court is of the considered opinion that the plaintiff has tried to take benefit on the basis of agreement which in no manner establishes as to*

*there being genuine transaction, as the alleged earnest money which as per the plaintiff was paid to Mukhtiar Singh qua the selling of the land by him and thereafter the said sum had been adjusted in the sale deeds executed by Mukhtiar Singh and Gurdev Kaur and with Gurdev Kaur; there was no such agreement nor any earnest money was paid to her; thus, it is highly improbable that a person with whom no earlier transaction had been taken place in which earnest money had been paid and the said sum is being adjusted in the subsequent transaction with him or her? Therefore, the arguments put forth by learned counsel Sh. A.K. Atraya do not inspire any confidence. The sale deeds dated 13.11.1996 had been executed by Mukhtiar Singh for a valuable consideration and the defendants No.2 to 4 are bonafide purchasers, as they had purchased the land for a valuable sum whereby Mukhtiar Singh had sold 5 marlas in favour of defendant Nos.2 to 4 and Gurdev Kaur had sold land measuring 2K-6M to the said defendants. The consideration has been established. It has been proved that on dated 13.11.1996 there was no transaction qua the agreement as the basis of the agreement i.e. the revenue documents which as per the plaintiff and PW1 and PW2 was the jamabandi but the said document has been supplied by the Halqa Patwari on 12.11.1996 only one day prior to the execution of the sale deed.”*

The judgment passed by the trial Court was well reasoned, based upon proper appraisal of evidence and correct interpretation of law. The Ist Appellate Court without any justifiable reason in an erroneous and arbitrary manner upset the judgment passed by the trial Court. In para No.9 of the judgment, learned Addl. District Judge, Ludhiana has observed that to his mind, the trial Court had committed an error and illegality while not granting the decree of alternative relief to the appellant/plaintiff, irrespective of the fact that cogent reasons have been given to decline the relief of decree for specific performance and from evaluation of the impugned judgment, the findings of the trial Court on the score of declining the relief of specific performance did not warrant

any interference. Thus, even, the Ist Appellate Court has affirmed the findings recorded by the trial Court that the plaintiff was not entitled to the main relief of specific performance. As far as the observations made by Addl. District Judge, Ludhiana that plaintiff had made out a case for alternative relief, such observations are totally arbitrary, not supported by the evidence on record and contrary to the factual and legal position. The trial Court by giving plausible and convincing reasons had come to the conclusion that plaintiff and defendant No.1 were colluding and the agreement to sell set up by the plaintiff was not a genuine document. It being so, there was no necessity of passing an alternative decree for recovery against defendant No.1, more particularly, when the earnest money allegedly paid had already been adjusted in two sale deeds, executed by defendant No.1 Mukhtiar Singh and his wife Smt. Gurdev Kaur in favour of the plaintiff. Then on what basis and for what reasons, the alternative relief of recovery of amount for damages was granted, is not forthcoming from perusal of the judgment given by the Ist Appellate Court. Such direction is totally arbitrary and perverse and cannot pass the judicial scrutiny.

Learned Addl. District Judge, Ludhiana compounded that mistake by creating a charge on the suit land sold by defendant No.1 to defendant Nos.3 & 4. When counsel for defendant No.1 had not contested the case of plaintiff and rather supported it before the trial Court, then, they were not at issue and if defendant No.1 felt that plaintiff deserved to get alternative relief, he could very well pay that

amount to the plaintiff. Then, where was the question of contest between two of them and learned ADJ, Ludhiana without due application of mind, granting alternative relief and creating charge of the said amount on the suit land. It may be mentioned here that the principle of estoppel also comes in the way of plaintiff in filing the suit. The plaintiff had got the two sale deeds executed from defendant No.1 and his wife, in which the amount of Rs.1,50,000/- allegedly paid as earnest money stood adjusted. There is nothing on record to show that while getting those sale deeds executed, the plaintiff had reserved his right to get sale deed executed regarding the suit land also. Rather, it is to be taken that he was satisfied by execution of those two sale deeds and he cannot agitate for execution of sale deed regarding the suit land in his favour. On the other hand, the contesting defendants come out to be bona fide purchasers for consideration. They being residents of the same village would not have entered into bargain to purchase it from defendant No.1, if the possession of the said land was with the plaintiff.

From the perusal of sale deeds executed by defendant No.1 in their favour Ex.D1 and Ex.D2, it clearly comes out that the possession of the suit land had been delivered to the vendees at the spot. Furthermore, it is highly unlikely that such defendants would have entered into any bargain to purchase the suit land with defendant No.1, if they were aware of any prior agreement to sell, having been in existence between the plaintiff and defendant No.1, since nobody wants to get involved in litigation unnecessarily. Though, according to the version of

plaintiff, defendant No.1 had informed defendant Nos.2 to 4 that an agreement to sell between him and plaintiff was already in existence but that seems highly improbable. There is no such mention in the sale deeds executed by defendant No.1 in favour of defendant Nos. 2 to 4. If, defendant No.1 had so stated, it is highly unlikely that defendant Nos.2 to 4 would have entered into transaction to purchase the suit land with him. Under the circumstances, the plaintiff was not entitled to alternative relief of recovery even. Therefore, such relief granted to him by Addl. District Judge, Ludhiana is liable to be set aside, by way of acceptance of appeal filed by defendants/appellants Bhajan Singh and Malkiat Singh i.e. IOIN-RSA-4542-2004, whereas, appeal filed by plaintiff i.e. IOIN-RSA-340-2005, seeking specific performance of agreement to sell is absolutely without any merit. No substantial question of law arises in the said appeal. Therefore, the same stands dismissed. The appeal filed by Bhajan Singh and Malkiat Singh is accepted. The impugned judgment and decree passed by Addl. District Judge, Ludhiana are set aside, whereas, the judgment and decree passed by the trial Court are restored.

01.10.2019

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**(H.S. MADAAN)**  
**JUDGE**

Whether speaking/reasoned :  
Whether Reportable :

|     |    |
|-----|----|
| Yes | No |
| Yes | No |